

The imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115. (This is a PLR.)

April 14, 2003

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see www.revenue.state.il.us/Laws/regs/part1200/), is in response to your letter of November 6, 2003. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to SELLER for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither SELLER nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, SELLER, we respectfully request the department issue a private letter ruling pursuant to 2 Ill. Adm. Code 1200.110 with respect to the following factual situation.

General Information

1. Enclosed please find an original Form IL-2848 Power of Attorney, authorizing FIRM to represent (the 'Seller') before the Illinois Department of Revenue (the 'Department');
2. This Private Letter Ruling ('PLR') is not requested with regard to hypothetical or alternative proposed transactions. The PLR is requested to determine the Retailers' Occupation Tax ('ROT') consequences of the actual business practice of the Seller;
3. This situation is not being examined as part of a Department audit of the Seller, nor is the Seller currently engaged in litigation with the Department with regard to this or any other tax matter;
4. The Department has not previously ruled regarding this matter for the Seller. Neither the Seller nor FIRM has submitted the same or similar issue to the Department on behalf of the Seller;

5. The Seller requests that certain information be deleted from the PLR prior to dissemination to others. The Seller requests that its name, the name of its parent, address, the location of its facilities, description of products being sold, and the name of its representative be deleted; and
6. The Seller knows of no authority contrary to the authorities referred to and cited below.

Statement of Material Facts

The Seller is an indirectly wholly owned subsidiary of PARENT ('Parent'), and for business purposes was formed as part of an initiative to centralize the procurement function of Parent and its Subsidiaries. The Seller is engaged in the business of selling SUPPLIES to the Parent and its subsidiaries (collectively the 'Customers'). The Seller has entered into services agreements ('Service Agreements') in which the Parent and one of its subsidiaries provide the Seller certain administrative services, including, but not limited to, accounting, personnel, cash management. The Seller's only office is located in the County portion of CITY1, Illinois. The CITY1 office is staffed by a Procurement Analyst ('Seller's Analyst') whose services are provided to the Seller by the Parent through the Service Agreements.

When Customers wish to acquire supplies for their operations, they submit a requisition to the Seller's representative in the Parent's purchasing department. As part of the Service Agreements, the Seller's representatives located at the Parent's CITY2 headquarters issue the Seller's purchase orders to vendors. Along with each purchase order, the Seller's representative issues a resale certificate to the vendor and designates the location to which the vendor is to ship the goods. The purchase orders to the vendor list the Seller as the purchaser and invoices for the purchases are addressed to Seller.

Once or twice a week, the Seller's Analyst accumulates information related to the supplies ordered by the Customers during the week and incorporates the information into a Purchase Confirmation. Seller's Analyst then submits the Purchase Confirmation to each Customer to be reviewed for accuracy. The Purchase Confirmation contains an attachment that sets forth the description, quantity, type, and the sales price for each item to be sold by Seller. The Customer approves the Purchase Confirmation by signing and dating the Purchase Confirmation. Each Purchase Confirmation states on its face that:

'SELLER hereby unconditionally offers to sell to Purchaser those articles described on the attachment hereto for the price indicated. Purchaser may only accept this offer by signing the indicated space below and returning the original signed copy to our sales agent CITY1, Illinois. This offer shall remain valid for thirty (30) days.'

Parent's purchasing department is authorized under the Service Agreements to perform certain services on behalf of all Customers, including signing for purchases. The Manager of Purchasing, or his or her designee, on behalf of the operating subsidiary reviews the Purchase Confirmation for accuracy, dates, signs and remits it to the Seller's Analyst in CITY1.

Upon receiving the signed Purchase Confirmations back from each Customer in CITY1, Seller's Analyst reviews each Purchase Confirmation before accepting the Purchase Confirmation by countersigning and dating it. Each Purchase Confirmation becomes binding on the Seller only upon its review and acceptance by Seller's Analyst in CITY1. Execution of the contract is the final action necessary to bind the Seller to the sale. After Seller's Analyst accepts the Purchase Confirmation, Seller's Analyst maintains a file of all signed Purchase Confirmations.

The Seller is invoiced by vendors and remits payment through a centralized cash management system. Upon receipt of the vendor's invoice, the Seller invoices Customers for the supplies. Additionally, intercompany journal entries are created for the Seller and Customers to record the remittance of payments and to reflect sales transactions to Customers, including sales taxes collected by the Seller.

Ruling Request

The Seller respectfully requests a binding PLR from the Department confirming that:

1. The receipt of signed Purchase Confirmation, representing the Parent acceptance of the Seller's complete and unconditional offer to sell the specified goods, at CITY1, conclusively establishes CITY1 as the situs of the sale for Illinois ROT purposes; and
2. Since the Purchase Confirmation should be characterized as acceptance of the Seller's complete and unconditional offer to sell, the state and local tax rate in effect in CITY1 applies to the sale.

Relevant Authorities

The ROT statutes do not specifically address the rules for determining the proper location of the sale. However, substantial guidance can be found in the regulations issued by the Department of Revenue for the local Home Rule Municipal, Home Rule County, Regional Transportation Authority, and Metro East Mass Transit District Retailers' Occupation Taxes as well as the Special County Retailers' Occupation Tax For Public Safety. In addition, administrative regulations have the force of law in Illinois and are construed under the same rules that govern the construction of statutes. (Northern Illinois Automobile Wreckers & Rebuilders Ass'n v. Dixon (1979), 75 Ill. 2d 53, 387 N.E.2d 320 (1979), *cert. denied*, 444 U.S. 844, 62 L. Ed. 2d 57, 100 S. Ct. 87).

Using consistent language, the local ROT regulations state that the Department considers the seller's acceptance of the purchase order or other contracting action in the making of the sales contract the most important single factor in the occupation of selling. Additionally, the regulations provide that if a purchase order *which is an acceptance of the seller's complete and unconditional offer to sell is received* by the seller's place of business or by someone working within a municipality that imposes Home Rule Municipal Occupation Tax ('HRMOT'), the seller incurs HRMOT liability in that jurisdiction. (86 Ill. Adm. Code Sec. 270.115).

Using identical language, the regulations state:

'Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of sections (f) and (g) of this section, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the municipality or by someone working out of such place of business, the seller incurs Municipal Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives physical possession of the property in Illinois.'

The Regulations further state that:

'Under a long term blanket or master contract which (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which such subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for Home Rule Municipal Retailer's Occupation Taxes with respect to such orders.'

It appears that there are no previously issued letter rulings with the precise fact pattern as presented here. However, several rulings on this matter involved taxpayers with similar order acceptance procedures. These rulings indicate that the receipt of the customer's acceptance of the seller's complete and unconditional offer to sell at CITY1 conclusively establishes the situs of the sale in CITY1 and, consequently, CITY1's HRMROT applies to the Seller's sales.

In support of the ruling request, the following PLRs use consistent language stating, '.... if a purchase order which is an acceptance of the seller's *complete and unconditional offer to sell is received by the seller's place of business* within the municipality or by someone working out of such place of business, the seller incurs ROT liability in the respective jurisdiction.'

The facts in PLR ST-01-0003 (February 2, 2001) deal with a wholly owned subsidiary ('Seller') who was formed to provide centralized procurement services for its parent and related operating subsidiaries ('customers') for their operating supplies and capital equipment needs. The customers submitted requisitions to the Seller's office in City A, and the Seller then procured the supplies and equipment from its vendors. The Seller's representative in City A signed a Sales Agreement incorporating information related to the supplies and equipment ordered by its customers, and submitted the Sales Agreement to its parent and related operating subsidiaries for their signature. The Sales Agreement became binding upon the Seller only upon the receipt of the countersigned Sales Agreement by the Seller's authorized representative in City A. The Department ruled that the receipt of a signed Sales Agreement representing the customer's acceptance of the taxpayer's complete and unconditional offer to sell goods established that city as the point where the sale occurred.

In PLR ST-00-0020, the Department ruled that the receipt of a signed contract representing a customer's acceptance of the taxpayer's complete and unconditional offer to sell goods established that city as the point in which the sale occurred. In issuing its ruling, the Department stated: 'Please note that receipt of an order is not necessarily acceptance. However, if when the order is received at City B, sellers become bound to perform the contract, without more, then a sale occurs in City B. If the contracts are thus accepted in City B, the state and local tax rate in effect in City B would be applied.'

In PLR 81-1566, the Department ruled that the Regional Transportation Authority ROT applied 'if the purchase order is accepted at the seller's place of business within the metropolitan region or by someone who is working out of such place of business...or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the metropolitan region or by someone working out of such place of business if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.'

PLR 82-0405 also indicates that 'if the purchase order is accepted at the seller's place of business within the municipality and if the purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received within the municipality, the seller incurs Municipal Retailers' Occupation Tax on that liability in that municipality if the sale is at retail and the purchaser receives physical possession of the property in Illinois.'

In PLR 83-0579, in addressing a taxpayer that was charging tax at a rate based on its customer's billing address, rather than its location in DeKalb County, the Department ruled that 'assuming that the purchase orders are accepted at the taxpayer's place of business within the City of DeKalb, or by someone working out of such place of business, or if the purchase order which is an acceptance of the taxpayer's complete and unconditional offer to sell is received by the taxpayer within such City, the taxpayer incurs local sales taxes of the City of DeKalb if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.'

In PLR 90-0857, the Department states 'in determining whether there will be liability for the Home Rule Municipal Retailers' Occupation Taxes, the point at which the property will be used or consumed and the place at which the purchaser resides are immaterial. So long as your company does not have a place of business in a home rule municipality or salespersons that accept purchase orders for your Seller in a home rule municipality that imposes a tax, you will incur no local tax liability. It should be noted that the same considerations apply for other locally imposed taxes such as the Regional Transportation Authority Tax and the DuPage County Water Commission Tax and the like.' Rather, the Department determined that 'the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business in the home rule municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the municipality or by someone working out of such place of business, the seller incurs Home Rule Municipal Retailers' Occupation Tax liability.'

86 Ill. Adm. 270.115(b)(1) explicitly states:

If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of subsections (f) and (g) of this Section, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the home rule municipality or by ***someone working out of such place of business***, the seller incurs Home Rule Municipal Retailers' Occupation Tax liability in that home rule municipality if the sale is at retail and the purchaser receives the physical possession of the property in Illinois. (Emphasis added).

This regulation refers not to an 'employee' working out of the seller's place of business, but rather to 'someone' working out of the retailer's place of business. Based on this regulation, it seems to make no difference under the Department's jurisdiction whether the receipt of the Customer's acceptance of the Seller's complete and unconditional offer to sell is performed by the Seller's Agent or by the Seller's employee.

We are aware of the amendment to 86 Ill. Adm. Code § 1200.110, providing that all PLRs will be automatically revoked ten years after the date of issuance. However, these letter rulings are indicative of the Department's position on sales situsing at the time, and we have no reason to believe that the Department's position has changed since these rulings were issued.

Discussion

The facts indicate that a sale is not binding on the Seller until the signed Purchase Confirmation is received by its representative in CITY1 and this is the final action necessary to bind the Seller to the sales contract. In each case, the foregoing private letter rulings issued by the Department demonstrate the proper method for situsing the sales based on Seller's facts. The Seller's only place of business is located in CITY1. In every case, the final act necessary to bind the Seller to the agreement is the Seller's receipt and signature of the completed Purchase Confirmation in CITY1. Under Illinois regulations and consistent with the private letter rulings discussed above, these sales should be sitused in CITY1 and the local sales tax rate for CITY1 should apply to the sales transaction.

Conclusion

We respectfully request that the Department issue a ruling confirming that the receipt of a customer's acceptance of the Seller's unconditional offer to sell at CITY1 conclusively establishes CITY1 as the proper situs of the sale for ROT purposes such that the state and local tax rate (including CITY1 HRMROT) in effect in CITY1 applies.

If the Department cannot conclude that the receipt of a customer's acceptance of the Seller's unconditional offer to sell to sell at CITY1 conclusively establishes CITY1 as the proper situs of the sale for ROT purposes such that the state and local tax rate (including CITY1 HRMROT) in effect in CITY1 applies under the Department's

regulations, I request that the Department contact me to determine what additional information is required or allow the taxpayer to rescind the ruling request.

We will be happy to provide copies of the agreements discussed in this ruling request and would welcome the opportunity to review the agreements with you. Please feel free to contact me with any questions or to schedule a meeting to discuss any aspect of this ruling request. We appreciate your response on these issues.

As you know, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order or other contracting action in the making of the sales contract. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred.

Please note that subsection (d) of Section 270.115 states as follows:

"Under a long term blanket or master contract which (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which such subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for Home Rule Municipal Retailers' Occupation Tax purposes with respect to such orders."

The seller's location in CITY1, Illinois is the location that has jurisdiction for local tax purposes. Note that this ruling is predicated on the fact that the purchase order is finalized prior to the delivery of the tangible personal property.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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Associate Counsel

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